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Debtors in Possession, as Appellees*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
<b>In re</b>	: <b>Chapter 11</b>
	:
<b>SEARS HOLDINGS CORPORATION, et al.,</b>	: <b>Case No. 18-23538 (RDD)</b>
	:
<b>Debtors.<sup>1</sup></b>	: <b>(Jointly Administered)</b>
-----X	

**DEBTORS' COUNTERSTATEMENT OF ISSUES TO BE PRESENTED  
ON APPEAL AND COUNTERDESIGNATION OF ITEMS  
TO BE INCLUDED IN RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure  
(the "**Bankruptcy Rules**") and Rule 8009-1 of the Local Bankruptcy Rules for the Southern

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

District of New York (the “**Local Rules**”), Sears Holdings Corporation and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), submit the following counterstatement of issues to be presented on appeal and counterdesignation of additional items to be included in the record in connection with the appeal of Apex Tool Group, LLC (“**Apex**”), filed October 29, 2019 [Docket No. 5525], from the *Order Denying Vendors’ Motions for Allowance and Payment of Administrative Expense Claims* [Docket No. 5371], entered by this Bankruptcy Court in the above-captioned chapter 11 cases on October 15, 2019, to the United States District Court for the Southern District of New York.

Debtors reserve their rights to supplement or amend the statement of issues to be presented on appeal and to designate additional items for inclusion in the record in the appeal.

**COUNTERSTATEMENT OF ISSUES  
TO BE PRESENTED ON APPEAL**

1. Did the Bankruptcy Court correctly determine as a matter of law that Apex was not entitled to an administrative expense claim under section 503(b)(1) of the Bankruptcy Code based solely on delivery of goods by a common carrier to the Debtors after the petition date?
2. Did the Bankruptcy Court correctly defer ruling on factual issues related to Apex’s purported reliance on the *Final Order Authorizing Debtors to (I) Pay Prepetition Claims of (A) Shippers, Warehousemen, and Other Non-Merchandise Lien Claimants and (B) Holders Of PACA/PASA Claims, and (II) Confirm Administrative Expense Priority for Prepetition Orders Delivered to the Debtors Postpetition, and Satisfy Such Obligations in the Ordinary Course Of Business?*

**COUNTERDESIGNATION OF ITEMS  
TO BE INCLUDED IN RECORD ON APPEAL**

Debtors designate the following items to be included in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and/or referenced within such items. By submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to seek to dismiss and otherwise challenge Winner's appeal. Further, by submitting this counterdesignation, the Debtors do not waive, and expressly reserve, their rights to rely on any of the documents designated by Apex in the *Statement of Issues and Designation of Record on Appeal by Apex Tool Group, LLC* [Docket No. 5937].

<b>No.</b>	<b>Document</b>	<b>Docket No.</b>	<b>Docket Entry Date</b>
1	Qualified Joinder of the Official Committee of Unsecured Creditors to Debtors' Omnibus Objection to Vendors' Motions for Allowance and Payment of Administrative Claims	3942	5/20/2019
2	Disclosure Statement for Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors	4478	7/9/2019
3	Order Denying Vendors' Motion for Allowance and Payment of Administrative Expense Claims	5371	10/15/2019
4	Notice of Appeal (Apex Tool Group, LLC)	5525	10/29/2019
5	Copy of Bankruptcy Court Docket Report Through November 25, 2019	N/A	N/A

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Dated: November 25, 2019  
New York, New York

*/s/ Garrett A. Fail*

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